



Water Quality NewsFlash

Published by California Department of Transportation, Division of Environmental Analysis, Office of Water Quality

October 18, 2004

Number 04-41

Isolated Waters – SWRCB guidance posted – The State Water Resources Control Board recently posted program guidance describing the State's approach for regulating discharges into waterways not connected to navigable waters (i.e., not "waters of the U.S." for purposes of the Clean Water Act). The regulatory status of these waterways has been murky since the Supreme Court's so-called SWANCC decision (Solid Waste Agency of Northern Cook County), which determined that an isolated flooded gravel pit in Illinois was not a water of the US, even if migratory ducks landed on it occasionally. As a direct result of SWANCC, the Corps of Engineers had disclaimed jurisdiction over 160 isolated waterbodies in California, as of December 31, 2003. Consequently, these waterways are no longer subject to the CWA (including Corps section 404 dredge and fill permits and the associated section 401 Water Quality Certifications, and section 402 NPDES permits).

The State Water Code, however, has broader jurisdiction than the CWA. Therefore, discharges and activities in these isolated waterways still need to comply with state requirements. Earlier this year, the State Board adopted General Waste Discharge Requirements (General WDRs) for small non-federal dredge and fill projects (see *NewsFlash 04-13*). The State's approach for regulating discharges subject to SWANCC, whether covered by the General WDRs or needing individual permits, is described in the guidance document: http://www.swrcb.ca.gov/cwa401/docs/isol_waters_guid.pdf

More information on the state 401 certification process for 404 dredge and fill permits is posted at: <http://www.swrcb.ca.gov/cwa401/index.html>. Of related interest, the state has contracted with UCLA to issue an assessment report on the success of existing compensatory mitigation projects by March 2006. *Also see related item from Healdsburg:*

NPDES – Healdsburg case may determine scope of permit coverage – Basalt Pond, a former gravel pit, lies adjacent to the Russian River. The horizontal distance between the river's edge and the pond varies from fifty to several hundred feet. In this alluvial region, the river, pond, and underlying aquifer are all hydraulically connected. The City of Healdsburg discharges its treated wastewater into the pond. As required by the State Water Code, the discharge is regulated by *Waste Discharge Requirements*. However, the discharge does not have an NPDES permit required by the federal Clean Water Act for discharges to "waters of the U.S.," which are surface waters. River Watch challenged this lack of a federal permit and won at the Federal District Court level. The court determined that the pond and nearby wetlands were "waters of the United States" within the meaning of the CWA. The court also found that the Basalt Pond and the subterranean groundwater that flowed through it were "tributaries" of the Russian River.

The case has now been appealed to 9th Circuit Court of Appeals. This is a key case because it appears to extend the definition of "tributary" to include groundwater in some cases. The California Association of Sanitation Agencies (CASA), and other agency groups have filed an amicus brief in support of Healdsburg. <http://www.northerncaliforniariverwatch.org/us/courtrulingPDF.PDF>

WQ NewsFlash is a weekly update of storm water and related news for the Department. *Verify information before taking action on these bulletins.* Contact Betty Sanchez, Betty_Sanchez@dot.ca.gov (916) 653-2115, or Fred Krieger, (510) 843-7889, fkrieger@msn.com with questions or to be added or deleted from e-mail list. Posted online at: <http://www.dot.ca.gov/hq/env/stormwater/publicat/newsflash/index.htm>